INDUSTRIAL BOARD OF APPEALS		
In the Matter of the Petition of:	·x :	
BERNARD WATSON AND RIGHTWAY	: :	
PLUMBING AND HEATING INC.,	:	
Petitioners,	:	DOCKET NO. PR 15-299
To Review Under Section 101 of the Labor Law:	:	DESOLUTION OF DECISION
An Order To Comply With Article 6 of the Labo Law, and an Order Under Article 19 of the Labo		RESOLUTION OF DECISION
Law, both dated July 23, 2015,	:	
- against -	:	
THE COMMISSIONER OF LABOR,	:	
Respondent.	: :	
	·X	

APPEARANCES

Rabinowitz & Galina (Michael Rabinowitz of counsel), for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (Kathleen Dix of counsel), for respondent.

WHEREAS:

STATE OF NEW YORK

This proceeding was commenced when petitioners filed a petition with the Industrial Board of Appeals (Board) on September 24, 2015 in an envelope post-marked September 22. The Board served the petition on respondent Commissioner of Labor on October 2, 2015. Respondent moved on October 21, 2015, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioners opposed the motion relying on provisions of the General Construction Law and the CPLR that are not applicable to proceedings before the Board.

Labor Law § 101 (1) provides that:

"Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner . . . Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order."

The orders sought to be reviewed were issued on July 23, 2015, and therefore, any petition for review filed with the Board with a post-mark after September 21, 2015 is untimely (id.; Board Rules of Procedure and Practice 65.5 [d] and 65.3 [a] [12 NYCRR 65.5 (d) and 65.3 (a)]). As the petition in this proceeding was post-marked after September 21, 2015, it was filed late and must be dismissed. Contrary to petitioners' assertion, CPLR § 2103 (b) (2) which provides that "where a period of time prescribed by law is measured from service of a paper and service is by mail, five days shall be added to the prescribed period," is not applicable to this proceeding (see Matter of Roy A. Dean et al., PR 14-207 [March 11, 2015] [CPLR applicable to state court proceedings, not the Board, and the CPLR's "mailbox rule" does not apply to filing a petition with the Board]). Petitioners' other arguments are also without merit.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor's motion to dismiss the petition for review is granted, and the petition for review be, and the same hereby is, dismissed.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Michael A. Arcuri, Member

Dated and signed by the Members of the Industrial Board of Appeals at Albany, New York on January 20, 2016.